

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/487, 383 01/18/00 BEDFORD

M 68019

022242 HM22/0130
FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO IL 60603-3406

EXAMINER

MELLER, M

ART UNIT

PAPER NUMBER

1651

9

DATE MAILED:

01/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/487,383	BEDFORD ET AL.
	Examiner Michael V. Meller	Art Unit 1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 November 2000.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3,4,6-8,13,15 and 17-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1, 3, 4, 6-8, 13, 15, and 17-28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____ .
 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . 20) Other: _____ .

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1, 3-4, 6-8, 13, 15, 17, 19 and 20 stand and new claims 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2287867 for the reasons of record and for the reasons which follow.

Applicant submits that GB does not describe a method for treating or preventing a bacterial infection in an animal as claimed by applicant.

While applicant's arguments are noted, it was stated in the previous Office action that since the composition is given to chickens, the composition will inherently prevent bacterial infections from bacteria such as *Salmonella* since it is well known in the art that chickens develop *Salmonella* infections. Thus, inherently the composition will prevent such infections since the ingredients are the same as those which applicant is using and thus would be expected to yield the same results since it is well known that chickens develop such infections.

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Claims 1, 3, 4, 6-8, 13, 15, 17-20 stand and new claims 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Bedford et al. (US 5,612,055) for the reasons of record and for the reasons which follow.

Applicant submits that Bedford does not describe a method for treating or preventing a bacterial infection in an animal as claimed by applicant.

While this argument is noted, for the above reasons applicant's claimed subject matter is anticipated by the reference.

Claims 1, 3, 4, 6-8, 13, 15, 19 and 20 stand and new claims 21-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Clarkson et al. for the reasons of record and for the reasons which follow.

The reference teaches the claimed method and indeed teaches that the feed is given directly to animals. The reference further teaches that the feed is produced to be free from harmful bacteria, such as *Salmonella*, see col. 3, lines 1-4. Further, the reference teaches that the use of expanders in the feed are advantageous because they effectively eliminate harmful bacteria, particularly *Salmonella*, see col. 3, lines 39-41.

Claims 1, 3, 4, 13, 15, 17-20 stand and new claims 21, 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Hansen et al. for the reasons of record and for the reasons which follow.

Applicant fails to address this reference in their response to the rejection under this section.

Hansen clearly teaches applicant's claimed method. In fact, the reference teaches that their xylanase preparation is particularly well suited for being processed into feed additives at conditions preventing microbial infections, particularly *Salmonella*, see col. 2, lines 2-6 and lines 11-17.

Claim Rejections - 35 USC § 103

Claims 1-20 stand and new claims 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2287867 in view of Bedford et al. for the reasons of record and for the reasons which follow.

Applicants argue that one of ordinary skill in the art would not have reasonable expectation from the references that addition of xylanase or cellulase to a feed would be an effective treatment or preventative for the specific bacterial infections.

While this argument is noted, it is without merit since as explained above, the feed is given to chickens and chickens have *Salmonella* infections routinely. Since this is the case, and since the references give the chickens the same feed as claimed by applicants, then one of ordinary skill in the art would have been motivated to give the feed since it is known in the art that chickens have bacterial infections from *Salmonella*.

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Claims 1-20 stand and new claims 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarkson et al. in view of Bedford et al. for the reasons of record and for the reasons which follow.

Applicant's arguments are noted but are not deemed to be persuasive.

Clarkson teaches the claimed method and indeed teaches that the feed is given directly to animals. The reference further teaches that the feed is produced to be free from harmful bacteria, such as *Salmonella*, see col. 3, lines 1-4. Further, the reference teaches that the use of expanders in the feed are advantageous because they effectively eliminate harmful bacteria, particularly *Salmonella*, see col. 3, lines 39-41.

Thus, the references clearly render the claimed subject matter obvious.

Claims 1-20 stand and new claims 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. in view of GB 2287867 for the reasons of record and for the reasons which follow.

Applicant's arguments are noted but are not deemed to be persuasive.

Hansen clearly teaches applicant's claimed method. In fact, the reference teaches that their xylanase preparation is particularly well suited for being processed into feed additives at conditions preventing microbial infections, particularly *Salmonella*, see col. 2, lines 2-6 and lines 11-17.

Thus, the references clearly render the claimed subject matter obvious.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

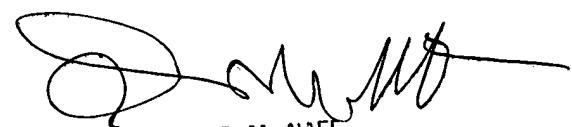
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 10:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

MVM
January 26, 2001



DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651